

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	

OPPOSITION OF AT&T

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AT&T Services, Inc.¹ hereby submits this opposition to the Petition for Declaratory Ruling or Alternatively a Rulemaking Regarding a Consumer’s Absolute Right To Revoke Consent To Receive Unwanted Text Messages from Common Carriers filed in the above-captioned proceeding by Mr. Paul Armbruster (“Petition”).²

INTRODUCTION AND SUMMARY

For more than 20 years, the Commission has consistently held that the Telephone Consumer Protection Act of 1991 (“TCPA”) does not apply to wireless service providers’ communications with their customers for which the customers are not charged. Because the consent framework developed pursuant to the TCPA does not apply to AT&T’s calls and texts to its own wireless customers, the concomitant consent *revocation* regime articulated by the Commission in 2015 also does not apply. Further, the Petition offers no basis for the Commission to conclude that it has misread the letter and intent of the TCPA for the past 25 years. Petitioner does not even attempt to make that argument. Instead, he argues that, even if

¹ AT&T Services, Inc. files these comments on behalf of its wireless affiliate, AT&T Mobility LLC (collectively, “AT&T”).

² Petition for Declaratory Ruling or Alternatively a Rulemaking Regarding a Consumer’s Absolute Right To Revoke Consent To Receive Unwanted Text Messages from Common Carriers, CG Docket No. 02-278 (filed July 9, 2019) (“Petition”). The Petition mistakenly refers to the common carrier exemption rather than the wireless carrier exemption. *See, e.g.*, Petition at 1-2. Because the common carrier exemption is irrelevant to the ability of wireless service providers to send text messages to their customers, this Opposition addresses the claims of Petition as they relate to the wireless carrier exemption.

the TCPA does not require express consent, it nonetheless imposes an opt-out requirement on wireless providers. But there is no legal basis for such an interpretation. Since the TCPA does not apply to no-charge communications between wireless providers and their customers, the TCPA provides no statutory basis for either type of consent regime. For that reason alone, the Petition must be denied.

But even apart from the Petition's legal infirmities, it offers no sound policy reason that would justify new regulation of wireless providers' customer communications for which the customer is not charged. Although these communications appear to be a pet peeve of Petitioner, given that he brought and settled a similar claim against T-Mobile in 2017,³ AT&T has received virtually no other complaints from its customers about such communications. That is not surprising, as text messages allow AT&T to efficiently and effectively provide timely information to the customer—such as when AT&T receives her payment, she approaches the data limit of her service plan, or she has entered an area where international roaming charges apply. Not only is there no cause to place limits on the ability of a wireless service provider to use the most efficient, reliable, and in many cases *only* viable means of communicating certain information to customers, such an intrusion on the provider-customer relationship would add costs and burdens for the systems changes required to implement such new regulations. There is no good reason for the Commission to go down that path, even if it could. To the contrary, the Petition seeks a harmful and expensive “solution” to a non-existent problem.

³ See Expedited Petition for Declaratory Ruling or Alternatively a Rulemaking Regarding a Consumer's Right To Revoke Consent To Receive Unwanted Text Messages from Common Carriers, CG Docket No. 02-278 (filed Jan. 20, 2017). Petitioner subsequently withdrew that petition after reaching a settlement, the terms of which were not publicly disclosed, with T-Mobile. See Joint Motion To Withdraw Expedited Petition for Declaratory Ruling, CG Docket No. 02-278 (filed Feb. 17, 2017).

BACKGROUND

AT&T, like all wireless service providers, sometimes needs to communicate with customers regarding the wireless services it provides to them. AT&T uses text messaging—i.e., SMS/MMS messages—to convey information to customers in a customer-friendly, convenient, and effective manner. Text messages are less intrusive than voice calls because they can be read at a customer’s convenience. And they are superior to email communications and bill inserts because, in AT&T’s experience, text messages are more likely to be noticed and read in a timely fashion. Moreover, AT&T does not actually have current and active email addresses for all of its customers. Even if a customer provides an email address when initiating service, AT&T has no way to ensure that the email address remains current or active at any particular point in the future. Nor does AT&T require a valid email or mailing address to purchase prepaid service, and, of course, those customers do not receive monthly bills at all.

Beyond that, delivering a message to the customer’s device provides greater certainty that the message is *actually* delivered and received by the *intended recipient*, as emails could be misdirected to a spam folder and emails and U.S. mail may be read by another member of the household.⁴ And to the extent the communication is intended to prompt action or a response by the customer, a text message allows her to do so easily, as she has the means to act in-hand. For all of these reasons, AT&T’s postpaid Wireless Customer Agreement (“WCA”), which all customers must consent to, expressly incorporates text messaging as one of the preferred means by which AT&T communicates with customers.⁵

⁴ For obvious reasons, text messaging also is more environmentally responsible than U.S. mail.

⁵ AT&T Wireless Customer Agreement § 1.11 (“As your wireless carrier, we will need to communicate with you about your Service on occasion. ... Email and text messages to your AT&T device are two of the primary methods that we use to contact you.”), <https://www.att.com/legal/terms.wirelessCustomerAgreement.html#whatIsTheTermOfMyService>. See also AT&T PREPAID Terms of Service, <https://www.att.com/legal/terms.prepaidServiceAgreement.html>; Cricket Wireless Terms and Conditions of Service, <https://www.cricketwireless.com/terms>.

AT&T and other wireless providers thus rely on text messaging to share important information with customers about their service. AT&T sends text message communications only when such communications are germane to the customer's service or customer service experience. In all cases, text messages from AT&T to its wireless customers are delivered at no charge to the customer. Some examples of service-related messages that a customer may receive from AT&T include, but are not limited to:⁶

- ***Legally required service messages.*** AT&T sometimes relies on text messages to convey information to customers that it is required to provide pursuant to law or its customer contracts. For example, prior to retiring its 2G network in 2016, AT&T informed affected customers by text message to let them know that, following planned network upgrades, the customer's 2G phone would no longer operate on AT&T's network. The message directed customers to visit a webpage provided in the message, or an AT&T store, to replace the outdated phone and avoid a disruption in service. AT&T currently is using text messages to inform postpaid wireless customers when AT&T Call Protect is activated on their lines, consistent with the disclosure requirements set forth in the Commission's *Opt-Out Call Blocking Declaratory Ruling*.⁷
- ***Data-usage/roaming notifications.*** The Commission has recognized the important consumer benefits of text messaging for communicating time-sensitive data-usage and roaming information.⁸ For wireless customers on service plans that include a fixed

⁶ The exclusion of communications from wireless providers to their customers using the wireless service from the TCPA's restrictions is not limited to service-related messages, and the Commission has never articulated such a limitation on the wireless carrier exemption.

⁷ See *Advanced Methods To Target and Eliminate Unlawful Robocalls; Call Authentication Trust Anchor*, Declaratory Ruling and Third Further Notice of Proposed Rulemaking, CG Docket No. 17-59, WC Docket No. 17-97, FCC 19-51 ¶ 33 (rel. June 7, 2019) ("*Opt-Out Call Blocking Declaratory Ruling*").

⁸ Federal Communications Commission, Bill Shock: Wireless Usage Alerts for Consumers, <https://www.fcc.gov/general/bill-shock-wireless-usage-alerts-consumers>.

monthly data allowance (i.e., a non-Unlimited service plan), AT&T automatically generates and sends a message informing customers when they have consumed 75 percent of the applicable data allowance, and again when the customer reaches the data allowance. Similarly, when AT&T detects that a customer's device is located in an area that is subject to international roaming charges, AT&T automatically generates and sends a message notifying them of the potential to incur roaming charges, along with information that can help the customer avoid such additional expense. Such messaging practices are consistent with the CTIA Consumer Code for Wireless Service and, in AT&T's view, are an important customer relations tool.⁹

- ***Welcome messages.*** AT&T often sends a welcome message to new customers when they purchase a plan. Welcome messages often are sent while the customer is located in a retail store and/or speaking with a customer care representative by telephone. In addition to thanking customers for their purchase, welcome messages provide immediate confirmation and assurance that the new service is operational. They also alert customers to the possibility of fraud or mistake in the event they receive a welcome message for a service or line they did not (or intend to) order.
- ***Billing/payment-related updates.*** AT&T also sends billing and payment updates to customers via text message. For new postpaid customers, AT&T may send a message when the customer's first bill is ready to provide information about available payment options, including the ability to pay using the wireless service. Depending on the type of customer (postpaid or prepaid) and the customer's billing (paper or paperless) and payment (manual or automatic) preferences, AT&T may send the customer a limited

⁹ CTIA, Consumer Code for Wireless Service § 11 (2011), http://files.ctia.org/pdf/The_Code.pdf ("Consumer Code").

number of other messages related to the customer's bill, either on an as-needed or monthly basis. For example, pursuant to Regulation E and NACHA and card network rules, AT&T is required to notify an autopay customer in writing at least 10 days prior to debiting the customer's deposit account in certain circumstances.¹⁰ Accordingly, AT&T relies on text messages to satisfy this legal requirement for prepaid customers. AT&T's systems also automatically generate a message to autopay customers when the credit or debit card on file has expired. Finally, AT&T sends customers a system-generated message that confirms receipt of payment and provides the date of payment and, for postpaid customers, the payment confirmation number. These billing/payment-related messages not only are required by law in certain circumstances and a standard practice in e-commerce, they enable the customer to avoid missing a payment deadline and/or to keep track of charges/debits made to his/her accounts.

ARGUMENT

For more than two decades, the Commission has recognized that the TCPA does not, and that Congress never intended to, restrict the ability of wireless service providers to communicate with their customers via wireless voice and text services for which the customer is not charged. It follows that the TCPA does not provide a source of authority on which to impose an opt-out requirement on wireless providers, or otherwise grant the Petition. The Petition provides no legal basis for the Commission to revisit 25 years of TCPA precedent and conclude that its longstanding interpretation of the statutory text and legislative history was erroneous.

¹⁰ See 12 CFR § 1005.10(d)(1); OG74 of the 2019 NACHA Operating Guidelines. More specifically, the notice requirement is triggered if the amount to be debited varies (up or down) from the amount the customer has authorized in an autopay authorization or, if no specific amount is authorized, from the last amount debited. Such a notice can instead be sent in electronic form, including via e-mail or SMS, subject to certain disclosure and other potential legal requirements.

The Petition also provides no sound policy reason to revisit the wireless carrier exemption. There is no evidence that communications between wireless providers and their customers cause undue burden or harm or, for that matter, are properly seen as part of the larger robocalling/robotexting problem. In fact, many of the text communications AT&T sends to wireless customers are legally required, and those that are not convey important or even critical information to customers, the provision of which is part of AT&T's commitment to providing the best possible customer service. SMS/MMS messages often are the most efficient and reliable means of conveying these messages, and in some cases the *only* viable way. The Commission therefore should deny the Petition.

I. THE COMMISSION SHOULD AGAIN CONFIRM THAT THE TCPA DOES NOT APPLY TO MESSAGES SENT BY A WIRELESS SERVICE PROVIDER TO ITS CUSTOMERS

The wireless carrier “exemption” to the TCPA is as old as the TCPA itself.¹¹ Following passage of the TCPA by Congress in December 1991, the Commission established the regulatory framework envisioned by the law, and which remains largely intact today, to guide and place certain limits on the way businesses communicate with consumers.¹² In so doing, the Commission concluded that, “[b]ased on the plain language of § 227(b)(1)(iii), ... the TCPA did not intend to prohibit autodialed or prerecorded message calls to cellular customers for which the called party is not charged.”¹³ Further, the Commission recognized that “neither the TCPA nor

¹¹ As discussed herein, the term “exemption” in this case is a misnomer insofar as the TCPA’s prohibition against autodialed and prerecorded messages never applied to communications between a wireless provider and its customers for which the customers are not charged, as the Commission repeatedly has held.

¹² 47 U.S.C. § 227; 47 C.F.R. § 64.1200; *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 7 FCC Rcd 8752 (1992) (“1992 TCPA Order”).

¹³ *1992 TCPA Order* ¶ 45. In 2003, the Commission clarified that the TCPA’s restrictions on voice calls also apply to text messages. See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 18 FCC Rcd 14014 ¶ 165 (2003) (“2003 TCPA Order”); see also *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 et seq.*, Declaratory Ruling and Order, 30 FCC Rcd 7961 ¶ 107 *et seq.* (2015) (“2015 TCPA Order”).

the legislative history indicates that Congress intended to impede communications between radio common carriers and their customers regarding the delivery of customer services by barring calls to cellular subscribers for which the subscriber is not [charged].”¹⁴

The Commission’s initial interpretation of the TCPA as it applies to wireless providers has not wavered in the more than 25 years since the *1992 TCPA Order*. For example, the *2003 TCPA Order* and *2012 TCPA Order* each reaffirm the Commission’s position that autodialed or prerecorded message calls and texts sent by wireless providers to their customers at no charge “do not fall” within the scope of the TCPA.¹⁵ Most recently, in 2015, CTIA sought confirmation that the omnibus TCPA order being adopted would not disturb the wireless carrier exemption.¹⁶ In direct response to CTIA’s request, the Commission again reiterated that “[w]e do not disturb the Commission’s earlier decision that the TCPA’s restrictions do not cover calls from wireless carriers to their customers.”¹⁷

Significantly, the wireless carrier exemption is founded on the Commission’s longstanding interpretation of the limits of the TCPA and *not* on the notion of implied consent. Time and again, the Commission has confirmed that “the TCPA’s restrictions *do not cover* calls from wireless carriers to their customers.”¹⁸ Moreover, Congress has taken no action to disturb the Commission’s interpretation of the TCPA. To the contrary, following the Commission’s adoption of the *1992 TCPA Order*, Congress enacted Section 227(b)(2)(C), pursuant to which

¹⁴ *1992 TCPA Order* ¶ 45.

¹⁵ *2003 TCPA Order* ¶ 160; *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Report and Order, 27 FCC Rcd 1830 ¶¶ 10, 27 (“*2012 TCPA Order*”) (summarizing conclusions reached in the *1992 TCPA Order*).

¹⁶ Letter from Krista L. Witanowski, Assistant Vice President Regulatory Affairs, CTIA – The Wireless Association, to Marlene H. Dortch, Secretary, FCC, CG Docket No. 02-278, at 1 (filed June 5, 2015) (urging the Commission “to expressly confirm that the draft Declaratory Ruling and Order protecting consumers against unwanted robocalls does not change the existing treatment of calls by wireless carriers to their customers, for which customers are not charged”).

¹⁷ *2015 TCPA Order* ¶ 4 n.13.

¹⁸ *Id.* (emphasis added); *see also 2012 TCPA Order* ¶¶ 10, 27; *2003 TCPA Order* ¶ 165 n.610.

the Commission has “by rule or order” *created* a handful of exemptions that permit certain autodialed or prerecorded message calls to wireless numbers and that, in some respects, are similar to the wireless carrier exemption.¹⁹ But for purposes of clarity, the Commission has steadfastly maintained, as noted above and as recently as 2015, that the wireless carrier “exemption” is statutory, arising from the text and legislative history of the TCPA. In other words, the Commission’s longstanding position is that it lacks authority to impose the TCPA’s restrictions on free communications from wireless service providers to their customers.

Given the recognized constraints on the scope of the TCPA, Section 227 necessarily precludes the conclusion proposed in the Petition: namely, that even in the absence of any statutory obligation to obtain consent, the TCPA nevertheless *requires* a wireless service provider, at a customer’s request, to cease calls/texts to the customer’s wireless device for which the customer is not charged.²⁰ To put it more simply: because no-charge text and voice communications from the wireless service provider to its customers are outside the scope of the TCPA, the TCPA does not provide authority to impose an opt-out requirement for such communications.

¹⁹ 47 U.S.C. § 227(b)(2)(C); *see 2015 TCPA Order* ¶¶ 125-48 (relying on the permissive authority conferred under Section 227(b)(2)(C) to establish limited exemptions to the TCPA’s consent requirements for certain financial institutions and healthcare providers); *Cargo Airline Association Petition for Expedited Declaratory Ruling; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Order, 29 FCC Rcd 3432 (2014) (using the authority granted in Section 227(b)(2)(C) to create an exemption to allow package delivery companies to alert wireless consumers about packages, subject to conditions).

²⁰ *See* Petition at 4-5. Petition also claims that the reference in the *2012 TCPA Order* to a commenter’s request for clarification regarding the scope of the wireless carrier exemption somehow imposes the Commission’s TCPA consent revocation framework. *See id.* at 3 (citing *2012 TCPA Order* ¶ 27). Not so. There, T-Mobile sought confirmation that wireless providers may send free autodialed or prerecorded message calls without prior written consent if the calls were intended to inform customers about new services that may better suit their needs “so long as the customer has not expressly opted out of receiving such communications.” *2012 TCPA Order* ¶ 27. The Commission responded that it had “addressed this issue in the *1992 TCPA Order* by concluding that Congress did not intend to prohibit autodialed or prerecorded message calls by a wireless carrier to its customer when the customer is not charged.” *Id.* Notably, the Commission did not intimate in any way that such calls were permitted only if the customer has not expressly opted out of them. Rather, it affirmed that “[n]othing in the record or our analysis of consumer complaints gives us a reason to alter this finding.” *Id.*

For this reason, the Petition’s reliance on the discussion of revocation of consent in the *2015 TCPA Order* is misplaced. Notably, the Petition does not argue that the Commission’s legal interpretation was incorrect as a matter of law. Instead, Petitioner assumes that the TCPA mandates an opt-out framework even for communications to which the TCPA does not apply. That assumption is wrong. The Commission’s entire discussion regarding consent revocation in the *2015 TCPA Order* was expressly predicated on the existence of “previously-given prior express consent” pursuant to the TCPA.²¹ And the Commission emphasized at the outset that nothing therein “disturb[s] the Commission’s earlier decision that the TCPA’s restrictions do not cover calls from wireless carriers to their customers.”²² Because the TCPA neither applies to, nor requires prior consent for, free calls/messages from a wireless provider to its customers, *a fortiori* nothing in the *2015 TCPA Order* requires a wireless provider to provide customers a mechanism to opt out of receiving such communications.

Petitioner concedes, as he must, that the wireless carrier exemption obviates any prior express consent requirement that otherwise would apply under the TCPA to free calls/texts from wireless providers to their customers.²³ Nonetheless, he claims that, as a matter of law, the consent revocation requirements adopted by the Commission nevertheless *do* apply to such communications.²⁴ However, the Commission has repeatedly reaffirmed that, based on the plain

²¹ *2015 TCPA Order* ¶ 56 (asserting authority to consider and decide the “threshold issue of whether a consumer has the right to revoke previously-given prior express consent ... [b]ecause the TCPA does not speak directly to the issue of revocation” and characterizing its statutory construction of “consent” as “the most reasonable interpretation of [the term]”).

²² *2015 TCPA Order* ¶ 4 n.13.

²³ *See* Petition at 2 (“The [wireless] carrier exemption exempts the need for AT&T to obtain prior written consent.”).

²⁴ To the extent the Petition’s position is that, pursuant to the *2015 TCPA Order*, he possesses a common law right to revoke consent to receive text messages from his wireless provider, *see* Petition at 5, the *2015 TCPA Order* says no such thing. In that order, the Commission determined that the consent revocation framework it established was consistent with common law principles. *See 2015 TCPA Order* ¶¶ 56, 58. But that is of no significance to a wireless provider’s ability to rely on the service it provides as a means of communication with its customer when the TCPA (and thus the consent revocation regime established pursuant thereto) does not apply.

language and legislative history of the statute, the Commission lacks authority under the TCPA to regulate free communications from wireless providers to their customers using the wireless service. Far from compelling the relief Petitioner seeks, granting the Petition necessarily would require the Commission to hold that its prior legal interpretations—and more than 20 years of precedent—were incorrect. The Petition provides zero legal support on which to base such a stark about-face and, indeed, there is none.²⁵ For these reasons, the Petition should be denied.

II. THERE IS NO SOUND POLICY RATIONALE FOR THE COMMISSION TO IMPOSE NEW LIMITS ON THE ABILITY OF A WIRELESS SERVICE PROVIDER TO COMMUNICATE WITH ITS CUSTOMERS

Even if statutory authority did exist for the Commission to regulate no-charge voice and text communications sent by wireless service providers to their customers, there is no good reason for the Commission to do so. The Petition does not allege that AT&T, or wireless providers as a general matter, abuse the flexibility the statutory exemption provides. Nor does he claim that receiving, reading, or deleting such messages imposes an undue or disproportionate burden on him or consumers generally. Rather, Petitioner claims only that he prefers not to receive certain (or any) text communications from his wireless provider, without regard to the provider's need to communicate (often time-sensitive) information to him.²⁶ The Petition also fails to allege, or provide support for, the notion that wireless service providers have any *incentive* to abuse the wireless carrier exemption. Indeed, such a notion is absurd on its face, as confirmed by the dearth of complaints regarding calls or texts sent by wireless providers to their customers. The marketplace for consumer wireless services is highly competitive. Wireless

²⁵ By the same token, the TCPA in relevant part restricts only those calls and texts made “using an[] automatic telephone dialing system” (“ATDS”). 47 U.S.C. § 227(b)(1)(A)(iii). The Petition’s assertion of an “absolute right” to revoke consent under the TCPA, Petition at 1, thus is incorrect as a matter of law. But even assuming the threshold requirement were met, Section 227 and the Commission’s longstanding TCPA precedent would stand as an obstacle to granting the requested relief even on a purely prospective basis.

²⁶ See Petition at 2.

providers vigorously fight to win, and keep, their customers. Any material misstep with a customer risks losing him or her to a competitor, which plainly would not be in the wireless provider's interest.

Notwithstanding Petitioner's own preferences, wireless service providers have good reason to send certain information via text message to their customers. The Petition apparently does not contest the fact that AT&T, like every wireless provider, is legally required to communicate with customers in certain circumstances. When AT&T determines that a simple text message is the most efficient, effective, and least intrusive method to do so, the Commission should not interfere with that decision. Indeed, for some customers, text messages are the *only* way AT&T has to provide a legally required message. As noted above, AT&T does not require that its prepaid customers provide email or mailing addresses when they purchase service, and those customers do not receive monthly bills. Even for postpaid customers who choose to provide AT&T with an email address when they initiate service, AT&T has no way of knowing whether that email address remains current and active. Thus, text messages are the only viable way for AT&T to ensure it can comply with its legal obligations.

Even in cases where a communication from AT&T is not legally required, restricting the ability of wireless providers to use the wireless service to communicate with customers would have deleterious effects on the customer experience. The Commission need look no further than its statements regarding the steps wireless providers took to address consumer harms associated with bill shock and consumer mobile wireless services.²⁷ In that circumstance, the Commission hailed the decision by the wireless industry to revise the CTIA Consumer Code for Wireless Service ("Consumer Code") to include voluntary commitments to notify customers when their:

²⁷ Federal Communications Commission, Bill Shock: Wireless Usage Alerts for Consumers, <https://www.fcc.gov/general/bill-shock-wireless-usage-alerts-consumers>.

(i) domestic voice, data, and messaging usage approaches and exceeds any applicable allowances that would trigger overage charges; and (ii) device(s) have registered abroad and may incur charges for international usage.²⁸ Specifically, the Commission stated that the revisions to the Consumer Code would “allow subscribers to better monitor and manage their use of their devices and avoid unexpected charges.”²⁹

As the Commission and the Consumer Code implicitly (if not explicitly) recognize, text messages are the most efficient and effective way to convey this information in a timely fashion; in fact, they may be the only way to impart the necessary information in a timely fashion.³⁰ No other merchant or service provider can remotely claim a comparable need to communicate with a customer regarding the customer’s wireless service *or* such a close nexus between the communication itself and the method of delivery.

Implementing an opt-out mechanism for voice and text calls to a wireless customer’s device also would be unduly burdensome and costly. The data-usage notification example provided above again is relevant. AT&T’s systems *automatically generate* such messages once a customer has consumed 75 percent of any applicable monthly data allowance, and again when the customer has used all of his or her high-speed data allowance for the month.³¹ AT&T currently does not have a systematic way to allow or capture opt-out requests for such system-

²⁸ Consumer Code § 11. AT&T annually certifies compliance with the Consumer Code to CTIA.

²⁹ Federal Communications Commission, Bill Shock: Wireless Usage Alerts for Consumers, <https://www.fcc.gov/general/bill-shock-wireless-usage-alerts-consumers>.

³⁰ See Federal Communications Commission, Bill Shock, <https://www.fcc.gov/general/bill-shock> (urging consumers to use “phone or text alerts” from their wireless providers as one way to avoid unexpected increases to their monthly wireless bills).

³¹ Consistent with the terms of certain Unlimited service plans, AT&T sends a system-generated message when the customer has consumed 16.5 GB of data within the billing cycle, which represents 75 percent of the 22 GB threshold that would trigger congestion-based data management for the remainder of the bill cycle. See <https://about.att.com/sites/broadband/network>.

generated messages for most of its customers.³² As a result, any requirement to allow customers to opt out of receiving messages from AT&T regarding its wireless services would require significant systems development work—all at a hefty cost.

Permitting customers to opt out of some messages, but not others, as the Petition seems to advocate, would pose the same cost/burden concerns, and potentially even more so. Indeed, it would be unworkable from a business perspective.³³ Wireless service providers cannot be expected to foresee in advance any and all reasons they may someday have to send a text message to customers. For example, until very recently AT&T had no expectation that it would have a need to inform customers of the fact that it is now automatically activating AT&T Call Protect on postpaid customer devices as an opt-out robocall mitigation tool.³⁴ Conveying the information by text message is expedient and allows AT&T to keep customers up-to-date about changes to their service in real time. Thus, to the extent the Commission were to place limits on the types of information that wireless service providers are permitted to convey to customers using the wireless service, or if AT&T is required to opt customers out of receiving certain categories of information via text or voice call, such regulation risks imposing unintended negative consequences.

As the Commission is well aware, AT&T is committed to finding tools to address the serious problem of robocalls. But such commitment need not, should not, and must not come at the expense of AT&T's ability to communicate with customers using the wireless service AT&T provides to them. Thus, the Petition should be denied.

³² For the limited subset of wireless customers for whom AT&T could effectuate an opt-out request, implementing the request would prevent the customer from receiving any and all system-generated messages, including data-usage notifications and messages that AT&T sends to comply with legal requirements.

³³ Furthermore, there is nothing in the TCPA that would require the Commission or wireless service providers to parse different types of service-related messages.

³⁴ *See generally Opt-Out Call Blocking Declaratory Ruling.*

CONCLUSION

For the reasons detailed herein, AT&T urges the Commission to deny the Petition and confirm that neither the TCPA nor the Commission's rules or precedent restrict the ability of wireless service providers to text or call their customers using the wireless service when the customer is not charged and, in turn, wireless service providers are not required to refrain from sending such communications.

Respectfully submitted,

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